IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 2257 of 2006(B)

CMP.757/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, PONNANI
CRIME NO. 132/06 OF THE PONNANI POLICE STATION

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PETITIONER: PETITIONER

M/S. CITICORP FINANCE (INDIA) LTD.,
1ST FLOOR, BUSINESS COMMUNICATION CENTER,
CHIRAMEL CHAMBERS, KURISHUPALLY ROAD,
RAVIPURAM, KOCHI, REPRESENTED BY
ITS MANAGER (COLLECTIONS).

BY ADV. SRI.P.M.KUNJIMOIDEENKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.T.K.SAIDALIKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS: RESPONDENTS

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1. STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, PONNANI,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SIRAJUDDIN K. YOOSAF,
EASY WAY ENTERPRISES, GENERAL MERCHANT,
VANDIPETTA, PONNANI, MALAPPURAM.

R1 BY PUBLIC PROSECUTOR SRI. S.U. NAZAR
R2 BY ADV. SRI.JOBI JOSE KONDODY

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2257 of 2006

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Dated this the 20th day of February, 2007

O R D E R

A vehicle bearing registration No. KL-10/X 2935 is the property involved in this petition. That vehicle was seized by the police in connection with Crime No.132 of 2006 of Ponnani police station registered, inter alia, under Section 332 I.P.C. The second respondent herein is an accused in that crime. The said vehicle belongs to the second respondent herein. He is the registered owner of the vehicle. The petitioner herein had entered into a hire purchase agreement with the second respondent. When the vehicle was seized by the police and seizure report was filed before the Magistrate, the petitioner herein filed an application for release of the vehicle to him. Accordingly, the learned Magistrate, by the impugned order, directed that the vehicle be released to the petitioner, on condition that he executes a bond for Rs.2 lakhs with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate. That order is not challenged by the second respondent herein.

2. The petitioner has come to this Court with this Crl.M.C. and the grievance of the petitioner is that though he had requested for release of the vehicle and for permission to dispose of the vehicle, the learned Magistrate had not considered the latter part of the prayer and had not specifically granted the said prayer. The petitioner wants it to be clarified that the petitioner, who, under the hire purchase agreement, has a right to sell the vehicle and apply the proceeds to the amount due from the second respondent, may be permitted to dispose of the vehicle subject to appropriate conditions.

3. The learned counsel for the petitioner submits that such a direction will only protect the interests of both the petitioner as also the second respondent. No purpose is achieved by keeping the vehicle idle in the possession of the petitioner. Disposal of the vehicle will help the petitioner to recover amounts due from the second respondent. The same will, in turn, help the second respondent to get the liability reduced or discharged.

4. The second respondent has entered appearance. He raises no serious objection against the prayer for release of the vehicle and for permission to sell the vehicle. But he points out that the vehicle is

involved in crime No.121 of 2006 of Chavakkad police station and the vehicle was released to the second respondent on the strength of a bond executed by him for Rs. 5 Lakhs with two solvent sureties each for the like sum.

5. Report of the J.F.C.M., Chavakkad was called for. The learned Magistrate submits that the vehicle is not, as such, required in connection with the said crime. But in case there is a direction for confiscation of the vehicle, the production of the vehicle will have to be secured. For this limited extent the vehicle may be required in connection with Crime No.121 of 2006 of Chavakkad police station, which has now ripened into C.C. No. 588 of 2006.

6. I have heard the learned counsel for the petitioner, learned counsel for the second respondent and the learned Public Prosecutor.

7. Considering all the relevant circumstances, I am satisfied that this Crl.M.C. can be allowed subject to appropriate conditions. Such directions shall, I am satisfied, secure the interests of all concerned and shall ensure that the property i.e. the vehicle, is not subjected to unnecessary deterioration and consequent loss of value, which will be detrimental to all concerned.

8. This Crl.M.C. is hence allowed. In supersession of the impugned order passed by the learned Magistrate, the following directions are issued:

(1) The vehicle shall be released to the petitioner and the petitioner shall be permitted to dispose of the vehicle and apply the proceeds in accordance with law, subject to the condition that he shall execute a bond for Rs. 5 Lakhs with two solvent sureties undertaking to place before the learned J.F.C.M., Ponnani or the learned J.F.C.M., Chavakkad such amount not exceeding Rs. 5 Lakhs as and when called upon by such Magistrates.

(2) It is made clear that this direction shall not in any way fetter the option of the petitioner to challenge the order of confiscation of the vehicle or any other order affecting his rights, in his capacity as the financier who had entered into a hire purchase agreement with the second respondent.

9. Communicate copies of this order to both J.F.C.M. Ponnani and J.F.C.M. Chavakkad.

(R. BASANT)
Judge

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